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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	MM Docket No. 94-80
Amendment of Section 73.606(b))	
Table of Allotments, TV Broadcast)	RM-8445
Stations. (Iron Mountain and)	
Menominee, Michigan, Wittenberg)	
Wisconsin and Ely, Minnesota))	

To: Acting Chief, Allocations Branch, Mass Media Bureau

COMMENTS OF THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS

The Association of America's Public Television Station ("APTS") hereby submits its comments in response to the Commission's *Notice of Proposed Rulemaking* ("Notice"), released July 13, 1994, in the above-captioned matter. The Commission's *Notice* was adopted in response to a Petition for Rulemaking, filed by Douglas A. Maszka d/b/a Tri-Cities Television Company ("Petitioner"), which requests allotment of Channel 31 to Menominee, Michigan, allotment of Channel 17 to Wittenberg, Wisconsin, and substitution of Channel *25 for Channel *17 at Iron Mountain, Michigan. APTS opposes the Petitioner's request for substitution of Channel *25 for Channel *17 at Iron Mountain and supports the Commission's alternative proposal to allot Channel 25+ at Menominee and Channel 46 at Wittenberg, which would allow Channel *17 at Iron Mountain to remain as a reserved educational allotment.

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APTS is a nonprofit membership association whose members comprise virtually all of the nation's 351 public television stations. APTS represents its members at the national level by presenting the stations' views to the Commission, Congress, the Executive Branch and to other federal agencies and policy makers.

APTS strongly opposes the Petitioner's request that the Commission reallocate a reserved educational channel for commercial use and substitute a higher channel as the educational allotment. Petitioner's proposal runs counter to two established Commission policies: 1) to preserve educational channel reservations, and 2) to avoid substituting channels when alternative, available channels exist. The Petitioner offers no public interest benefits, nor any hardship reasons, to attempt to justify its proposed reallocation. APTS submits that Petitioner would be hard pressed to offer any rationale that would justify the Commission altering its established policy of preserving reserved allotments for educational public television use. This is particularly true in this case in which, as the Commission itself has proposed, there are alternative channels for allotment to Menominee and Wittenberg that would not require reallocation of reserved Channel *17.

I. Petitioner's Proposal For Reallocation Of A Reserved Educational Channel Is Not In The Public Interest And Is Contrary To Commission Policy To Preserve Educational Allotments

The Petition follows a pattern rejected by the Commission in previous cases, where a petitioner seeks to substitute a higher reserved channel for a lower one, with the attendant disadvantages to public television, in order to accommodate a proposed commercial allotment. Public television interests have consistently opposed arguments that these substitutions are no worse for public television, as APTS does here. There are many different issues involved in moving higher in the UHF spectrum, which include not only

propagation characteristics, but also cable TV channel placement in a media environment where cable plays an ever-increasing role and channel placement can be critical. The Commission has properly refused to allow public television to be disadvantaged by these substitutions, especially when another channel is available for commercial use. *See, e.g., TV Table of Allotments (Santa Maria, CA)*, 7 FCC Rcd 7608 (MM Bur. 1992) (FCC refused to substitute Channel *68 for vacant Channel *27 at Coalinga to accommodate a commercial Channel 27 allotment at Santa Maria, and, instead, allotted Channel 36 to Santa Maria).

Moreover, the Petitioner offers no reasons why its proposal to displace Channel *17 should be deemed a preferred allotment scheme. Petitioner does not suggest any public interest benefits to its proposal, nor any extenuating circumstances that justify an exception to established Commission policy. The Petitioner states only that it owns equipment tuned to Channel 31 which it would like to use.¹ However, the cost of retuning the transmitter and rebuilding the antenna to operate on Channel 25 should not be significant if Petitioner plans, as it has claimed in its petition, to construct and operate two new television stations, thereby implicitly representing that it is financially qualified to do so.²

¹ Petitioner states that it "requests allotment of Channel 31 to Menominee, Michigan, because it owns expensive channel dependent equipment necessary to place a Television Channel 31 operation at Menominee 'On Air'" (Petition, p. 2). In its Engineering Statement, Petitioner then points out that the proposed Channel 31 allotment to Menominee would be short-spaced to the Channel *17 allotment at Iron Mountain, and, therefore, requests substitution of Channel *25 for Channel *17 at Iron Mountain (Engineering Statement, p. 3).

² The *Notice* suggests that the Petitioner may not be able to apply for and build both stations, because they will have overlapping Grade B contours in contravention of Section 73.3555 of the Commission's Rules. If the Petitioner plans to build stations so small that there will be no overlap, a question is raised regarding efficient use of the spectrum, which further justifies not disturbing the existing noncommercial allotment.

APTS submits that the Petitioner's request to reallocate a reserved educational channel for commercial use is not in the public's interest. As the Commission has recognized, the educational channels reserved in the Table of Allotments are intended for the benefit of the public as a whole. As such, they are a valuable resource belonging to all of the public and are to be maintained for noncommercial use, either now or in the future, whenever resources become available to activate them, in accordance with the Commission's intent when it first reserved channels in its Table of Allotments.³

II. Petitioner's Request Is Contrary To Commission Policy To First Seek Available Channels Prior To Reallocation

Petitioner's proposal is particularly contrary to the public interest because a satisfactory alternative allotment scheme exists that does not require a change in a reserved allotment, and, therefore, there is no need to disturb the reserved allotment to bring new commercial service to the public or for any other reason. As proposed by the Commission in its *Notice*, Channel 25+ could be allotted to Menominee and Channel 46 could be allotted to Wittenberg without disturbing any existing allotments. As the Commission states, "[I]t is Commission policy not to make substitutions when other channels are available for allotment without changing channels" (*Notice*, paragraph 3). The burden rests upon the Petitioner to show why the Commission should alter its established policy, a burden that to date the Petitioner clearly has not met (*Notice*, paragraph 3). APTS believes that any reason offered by the Petitioner would be insufficient to justify disturbing a reserved educational allotment when alternatives exist.

³ *Sixth Report and Order*, Docket Nos. 8736 et al., 41 FCC 148, 161-62 (1952).


Conclusion

The Petitioner's conclusion that its proposal "can be accomplished with one simple channel substitution" (Engineering Statement, p. 8) manifests a lack of appreciation for the significance and importance of the Commission's reservation of educational television channels for the public's benefit. Any reallocation of a reserved educational channel would open the door to a slippery slope that would result in a chipping away at a valuable resource preserved for the public as a whole, without any corresponding public benefits.

Respectfully submitted,

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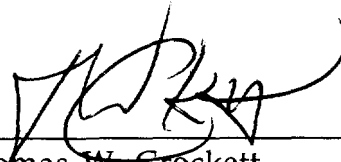

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September 6, 1994

Certificate of Service

I, Thomas W. Crockett, hereby certify that I have on this 6th day of September, 1994, sent via first-class mail, postage prepaid, copies of the foregoing Comments of Association of America's Public Television Stations to the following:

Douglas A. Maszka d/b/a
Tri-Cities Television Company
600 Vroman Street
Green Bay, Wisconsin 54303

A handwritten signature in black ink, appearing to read 'T. W. Crockett', is written over a horizontal line.

Thomas W. Crockett
America's Public Television Stations